IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 301 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHYAM PRASAD CHANDA

Versus

STATE OF GUJARAT

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Appearance:

MR DIPAK R DAVE for Petitioner

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 27/07/2000

ORAL JUDGEMENT

Rule. Learned A.P.P. Mr. S.S. Patel waives service of rule on behalf of the respondents nos.1 and 2.

The petitioner Shyama Prasad Chanda an Officer Incharge of M/s. Jagdish Oil Industries Ltd. a Company

registered under the provisions of Company Law has preferred the present Revision Application against the order of issuance of warrant in the proceedings of Criminal Case no.4236/94 by the Court of Judicial Magistrate First Class, Mahanagarpallika, Baroda, against the owner/partner/Managing Director/Secretary/Company Nominee of M/s. Jagdish Oil Industries Ltd. factory.

The petitioner has also challenged the form of warrant sent for execution through the respondent no.2.

It appears from the record that Food Inspector having taken a sample of Vanaspati Ghee from the factory of M/s. Jagdish Oil Industries at Porbandar has filed complaint in the Court of Judicial Magistrate, First Class, Vadodara, as office of the Company appears to have been situated at Vadodara. It is required to be noted that as per the certified copy of Rojkam produced by the petitioner M/s. Jagdish Oil Industries Ltd. appeared in the proceedings of Criminal Case no.4236/94 through Advocate Mr. R.K. Dudhiwala on 10-1-1999 through nominee appointed by the Company one Mr. Lalit Agrawal.

It further appears from the record that subsequently said nominee appointed by the Company to represent the Company before the Court in the said case, Lalit Agrawal having dispute with the Company is no more in service. However, the Company did not make any arrangement to represent the Company before the said Court in the said matter and subsequently when the matter was called out M/s. Jagdish Oil Industries Ltd. as accused having not remained present before the Court, order of non bailable warrant was issued and pursuant to the same warrant as per xerox copy produced by the petitioner was sent to the respondent no.2 for execution.

It has been contended on behalf of the petitioner that the petitioner is at present in charge of Management of M/s. Jagdish Oil Industries Ltd.. That M/s. Jagdish Oil Industries Ltd. having been declared as a sick unit by BIFR is a non working unit and the affairs of the Unit are not in order. The petitioners have no knowledge about the Criminal Case no.4236/94 which was pending before the Company in the Court of J.M.F.C., Baroda. The petitioner came to know about the said case only when the respondent no.2 sought to serve above stated warrant issued by the Court against M/s. Jagdish Oil Industries Ltd, and as such, the present Revision is filed by the present petitioner to quash and set aside the said warrant.

Learned Advocate Mr. Dave has heavily relied on the provisions of Sec.70 of the Criminal Procedure Code and the form of warrant prescribed in the Criminal Manual to contend that as per requirement of the law, warrant should contain a definite name of a person on whom it is to be executed. That, in the instant case, warrant is addressed to M/s. Jagdish Oil Industries Ltd. factory, Mahapalikanagar, Porbandar(Gujarat) on its owner/partner/Managing Director/ Secretary/Company Nominee. That such a description cannot be said to be a person, and as such, warrant is illegal, not being in consonance with the form of warrant prescribed under the Criminal Manual read with Sec.70 of the Criminal Procedure Code.

The said submission of Mr. Dave cannot be accepted because the Company is also deemed to be treated as a person under the law and summons or warrant can be issued against the Company and the Criminal Procedure Code prescribes detailed provisions as to how service is to be effected against the Company and by the Company and how the Company is to be represented before the Court either as accused or party to the proceedings.

In the instant case, it prima facie appears that the petitioner having taken over charge of the factory of M/s. Jagdish Oil Industries Ltd. ought to have looked into the record and made arrangement for representing the Company before the Court of J.M.F.C., Baroda in pending Criminal Case no.4236/94. It is the default on the part of M/s. Jagdish Oil Industries Ltd. or the petitioner as nominee of M/s. Jagdish Oil Industries Ltd. to remain absent on the date fixed by the Court for further prosecution of the pending case.

Under the circumstances, it cannot be said that the learned J.M.F.C. has exceeded his jurisdiction in issuing warrant and sending for execution to respondent no.2.

It is also submitted on behalf of the petitioner that there is a genuine difficulty on the part of the present petitioner inasmuch as if the petitioner makes attempt to approach the said Court, the petitioner would be apprehended under the warrant and would be taken into custody which would cause not only embarrassment but stigma to his reputation and hardship though the petitioner is not entitled to claim quashing of the order issuing warrant or the form of warrant which is issued.

Thus, taking an overall view of the facts and

circumstances as discussed above the following order is passed:

(i) The petitioner is directed to obtain appropriate authority from the management of M/s. Jagdish Oil Industries Ltd. and further directed to make arrangement to appear in pending Criminal Case no.4236/94 in the Court of J.M.F.C., Mahapalikanagar, Vadodara through an Advocate and shall make detailed application not only explaining the circumstances under which the petitioner could not remain present when the matter was called out for further proceedings but also express sincere regret and apology for remaining absent when the matter was called out for further proceedings and shall pray for cancellation of warrant on the basis of the fact that the petitioner has now made arrangement to represent M/s. Jagdish Oil Industries Ltd. as an accused in pending Criminal Case no.4236/94 before the Court.

(ii) The learned J.M.F.C. Mahapalikanagar, Vadodara is directed to decide the application, if any, tendered by the present petitioner or M/s. Jagdish Oil Industries Ltd. in accordance with law. However, the execution of the impugned warrant issued against M/s. Jagdish Oil Industries Ltd. is stayed against the present petitioner till 9th August, 2000.

Rule to that extent is made absolute. Direct service is permitted.

(A.K.Trivedi,J.)

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